

SEC Staff Asks for Time: Feels Pressure From Automatic Filing Effectiveness

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Insurance companies filing amendments to registration statements for their variable product registration statements, as well as mutual funds, frequently rely on Rule 485(a). Under the rule, post-effective amendments filed by registrants automatically become effective in as little as 60 days without any staff action. In the statement, the Division raised the concern that the time until automatic effectiveness may be insufficient for the Division staff to review and address all issues in a filing.

To alleviate this problem, the statement:

- “urges” registrants filing under Rule 485(a) to contact the staff regarding any issues that may raise material questions of first impression before they file; and
- “requests” registrants either to respond to any staff comments on Rule 485(a) filings at least five days before the filings become effective automatically or to delay effectiveness until all such comments have been resolved.

However, as SEC officials, including Chairman Jay Clayton, have recently emphasized, a staff statement of this type is not legally binding. See [“Has OMB Reined in the SEC?”](#) Thus, the Division’s statement merely “urges” and “requests” registrants to cooperate and does not discuss what the consequences, if any, might be for disregarding the staff’s preferences as set out in the statement.

There are many reasons why, in a given case, registrants may wish to disregard those staff preferences. Accordingly, registrants will need to carefully weigh such considerations in light of each amendment’s particular facts and circumstances.

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